

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CHARLES CARNEGLIA,

Petitioner,

– against –

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM AND
ORDER**

11-CV-4181

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ FEB 26 2013 ★

BROOKLYN OFFICE

JACK B. WEINSTEIN, Senior United States District Judge:

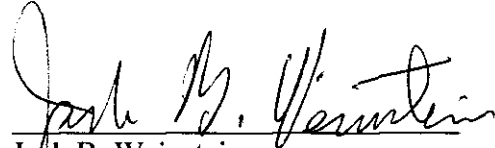
Petitioner moves, pursuant to Rule 60 (b) of the Federal Rules of Civil Procedure for an order vacating the denial of Petitioner's section 2255 motion "based on the Second Circuit's recent decision in *United States v. Gupta*," 699 F.3d 682 (2d Cir. 2011). Petitioner's Rule 60 (b) Motion at 1, Feb. 14, 2013, ECF No. 20.

His claim of unconstitutional courtroom closure was fully discussed and rejected in the Memorandum, Order and Judgment of dismissal ("Memorandum") of March 16, 2012, ECF No. 16, *cert. of app. denied*, Feb. 6, 2013, ECF No. 19 (no "substantial showing of the denial of a constitutional right"). In *Gupta*, "the district court intentionally excluded the public from the courtroom for the entirety of *voir dire*." 699 F.3d at 687. In the instant case the courtroom "was open to the public...[and] the press." Memorandum at 2. *Gupta* has no bearing.

The motion is dismissed as frivolous. Were a certificate of appeal to be required, it would be denied.



SO ORDERED.



Jack B. Weinstein
Senior United States District Judge

Date: Feb. 21, 2013
Brooklyn, New York